

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554DISPATCHED
MMF Docket No. 92-192

In the Matter of

Amendment of Section 73.202(b), RM-7960
Table of Allotments, RM-8036
FM Broadcast Stations.
(Walton and Rochester, Indiana)

NOTICE OF PROPOSED RULE MAKING

Adopted: July 30, 1992;

Released: August 26, 1992

Comment Date: October 19, 1992

Reply Comment Date: November 3, 1992

By the Chief, Allocations Branch:

1. The Commission considers herein two separately filed, mutually exclusive petitions for rule making. The first proposal, filed on behalf of J.B. Ladd ("Ladd"), requests the allotment of FM Channel 229A to Walton, Indiana, as that community's first local aural transmission service (RM-7960). The second proposal, filed on behalf of Dowagiac Broadcasting Company, Inc. ("DBC"), licensee of Station WDOF-FM, Channel 221A, Dowagiac, Michigan, requests the substitution of Channel 229A for Channel 221A at Rochester, Indiana, and modification of the license of Manitou Broadcasting Corporation ("Manitou") for Station WROI(FM), Channel 221A, to specify the new channel.¹ The Rochester substitution is requested to enable Station WDOF-FM to increase its facility to 6 kilowatts at Dowagiac. Manitou filed a statement in support of DBC's proposal. Each proponent stated an intention to apply for their requested channel, if allotted.

2. In support of the respective proposals, Ladd states that the allotment of Channel 229A at Walton (population 1,053),² would provide that community with its first local aural transmission service. DBC states, *inter alia*, that the requested Rochester substitution would eliminate an exist-

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ing "grandfathered" short-spacing between Station WROI(FM) and Station WDOF-FM, as well as with Station WVSH(FM), Channel 220A, Huntington, Indiana. Moreover, DBC asserts that the Rochester substitution would enable both Manitou and DBC to improve their facilities to 6 kilowatts.³

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3. As indicated above, a study of the proposals reveals that both cannot be accommodated, as requested. Walton and Rochester are 41.5 kilometers (25.8 miles) apart whereas a distance of 115 kilometers is required between cochannel Class A allotments. Therefore, we will optionally propose the allotment of Channel 229A to Walton, or to Rochester.

4. A staff engineering analysis reveals that Channel 229A can be allotted to Walton consistent with the minimum distance separation requirements of Section 73.207(b)(1) and (2) of the Commission's Rules with a site restriction 3.1 kilometers (2.0 miles) northeast of the community⁴ to avoid a short-spacing to Station WKHY(FM), Channel 228A, Lafayette, Indiana.⁵ Alternatively, Channel 229A can be allotted to Rochester, Indiana, in conformity with the Commission's Rules at the existing site of Station WROI(FM).⁶ Therefore, we shall propose to modify the license of Station WROI(FM), Rochester, Indiana, to accommodate DBC's modification plans at Dowagiac, Michigan. Since Walton and Rochester are both located within 320 kilometers (200 miles) of the Canadian border, concurrence of that government to the proposed allotment of Channel 229A at either community is required.

5. In view of the mutual exclusivity between the Walton and Rochester proposals, we shall afford the proponents an opportunity to demonstrate in comments why their community should be preferred. In this regard, the parties should be guided by the allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982), as follows:

- (1) first fulltime aural service;
- (2) second fulltime aural service;
- (3) first local service;
- (4) other public interest matters;
- (co-equal weight is given to priorities (2) and (3)).

It should be noted that the Walton proposal seeking a first local service (priority 3) constitutes a higher allotment priority than DBC's requested increase in facilities (priority 4).

¹ The Rochester proposal was originally denied by staff letter May 1, 1991. A petition for reconsideration of our action, filed by DBC, will be dismissed as moot at the conclusion of this proceeding.

² Population figure was taken from the 1990 U.S. Census.

³ Both WROI(FM) and WDOF-FM presently operate as grandfathered Class A stations. The distance between the authorized site for Station WROI(FM), Rochester at coordinates 41-03-02 and 86-15-39 and Station WDOF-FM, Dowagiac, at coordinates 41-59-52 and 86-03-14, is 106.6 kilometers (66.2 miles), whereas 115 kilometers (185.1 miles) is required to accommodate DBC's desire to increase its facility to 6 kilowatts. DBC adds that at the present time, it is further constrained in site flexibility to accommodate an increase in power to full Class A facilities at Dowagiac due to the close proximity of

Station WKGH(FM), Channel 222A, Allegan, Michigan, at coordinates 42-34-52 and 85-45-17. The distance between Allegan and Dowagiac is 69.3 kilometers (43.1 miles), whereas a minimum separation of 72 kilometers (115.9 miles) is required. We also note that Station WDOF-FM is 2.1 kilometers (1.3 miles) short spaced to the application for Channel 220A at Howe, Indiana, at coordinates 41-38-59 and 85-21-12 (see File No. BPED-910320MA).

⁴ Coordinates used for Channel 229A at Walton are 40-40-45 and 86-12-39.

⁵ Coordinates at the licensed site for Station WKHY(FM) are 40-23-13 and 86-58-10.

⁶ As indicated above, coordinates at the licensed site for Station WROI(FM) are 41-03-02 and 86-15-39.

6. Whenever an existing licensee or permittee is ordered to change frequencies to accommodate a new channel allotment, Commission policy requires the benefitting party to reimburse the affected station for costs associated therewith. In this instance, DBC stated its willingness to reimburse Station WROI(FM), Rochester, Indiana, for its reasonable expenditures associated with moving to proposed Channel 229A to accommodate DBC's desire to expand its coverage area by increasing its operation for Station WDOV-FM to 6 kilowatts.

7. Although an *Order to Show Cause* to Manitou is not required in view of its consent to DBC's modification request, we will serve it with a copy of this *Notice*.

8. In view of the above, the Commission believes it is appropriate to solicit comments on the optional proposals to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Walton, Indiana	--	229A
	or	
Rochester, Indiana	221A	229A

9. IT IS ORDERED, That the Secretary of the Commission SHALL SEND a copy of this *Order* to Manitou Broadcasting Corporation, Radio Station WROI(FM), 100 W. Ninth Street, Rochester, IN 46975.

10. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

11. Interested parties may file comments on or before **October 19, 1992**, and reply comments on or before **November 3, 1992**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioners' counsel, as follows:

Lawrence Roberts, Esq.
Mark N. Lipp, Esq.
Mullin, Rhyne, Emmons and Topel, P.C.
1000 Connecticut Ave., N.W., Suite 500
Washington, DC 20036
(Counsel for J.B. Ladd)

Leonard S. Joyce, Esq.
Blair, Joyce & Silva
1825 K Street, N.W., Suite 510
Washington, DC 20006
(Counsel for Dowagiac Broadcasting Company, Inc.)

12. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table

of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

13. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in

reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.